IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
W.P.NO.462 OF 2005

Hindoostan Crown Mills Siddhivinayak
Kamgar Karmachari Sangharsh
Sanghatana & Anr. ..Petitioners

Vs.

The Hindoostan Spg. and Wvg.
Mills Ltd. and Ors. ..Respondents

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Mr.N.M.Ganguli Senior Counsel for Petitioners
Mr.S.H.Doctor Sr.Counsel i/b Federal &
Rashmikant for Respondent No.1
Mr.Deepak Thakkar i/b Pragna Thakkar and Co.
for Respondent No.2
Ms.Vidya Shreedharan i/b Mulla & Mulla & Craigie
Blunt & Caroe for Respondent No.6
Mrs.P.A.Purandhare Adv. for Respondent No.8
Ms.Hutoxi Tavadia i/b Mahesh Thorat for
Respondent No.10
Mr.S.M.Dixit Spl.Counsel for Respondent Nos.4 and 11
Mr.S.S.Pakale with Mr.K.J.Kanpile Adv. for
Respondent No.12

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CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : AUGUST 1,2006

P.C.

1. Petitioners a Union, by the present petition, are challenging the order of B.I.F.R. dated 1.4.2006 whereby B.I.F.R. sanctioned the scheme for rehabilitation. Two appeals were preferred, one by the petitioners herein which came to be disposed of by order dated 23.12.2004 and other by the Management

in Appeal No.233 of 2004 which came to be disposed of by order dated 12.4.2005. The Respondent No.1 is a textile Mill to which the provisions of the Bombay Industrial Relations Act are applicable. Respondent No.10 is the recognised Union. At the outset, it may be mentioned that respondent No.10 a recognised Union, is not opposing the scheme sanctioned by B.I.F.R.

2. It is the case of the petitioners, a non-recognised Union who were also heard before B.I.F.R. that the scheme as framed permitting the closure of the Undertakings in Mumbai ought not to have been sanctioned as the Undertakings in Mumbai were only vilable Undertakings, inasmuch as B.I.F.R. and A.A.F.I.R. have not considered those aspects, the impugned orders are liable to be set aside. Our attention is also invited to Section 80 of the Sick Industrial Companies (Special Provisions) Act, 1985 to point out that there is no provision for sale of the Undertakings for the purpose of working out a scheme under the Act. It is also sought to be contended that the report relied upon by B.I.F.R., was not available to B.I.F.R. and consequently, impugned order is liable to be set aside. On behalf

of the Management, our attention is invited to the affidavit filed by Shri.Madhav Ghaisas, Vice President (Finance) of Respondent No.1 Company. It is pointed out that in terms of the scheme which was sanctioned, the appointment of Knight Frank India Ltd. (KF) was made for the purpose of identifying the right of the parties to develop the land. After the enquiries, KF identified M/s. K.Raheja Corporation as a most suitable developer. The selection process includes the screening and clearance of the developer by the committee of lenders comprising of ICICI, the Lead Financial Institution and certain consortium banks. The credentials of KRC who had been identified by consultant KF, was considered by the Empowered Committee. The Core Group granted its principal approval to the proposal on 28.5.2003. The Empowered Committee approved the proposal as put up by the Core Group on 4.8.2003. The terms were also approved by the Monitoring Committee (Headed by Retired Judge of the High Court) constituted by D.C.Rule 58 of D.C.Regulations for Greater Mumbai 1991. KRC has advanced a sum of Rs.40 crores for payment to the workers' dues and other development expenses. The Respondent No.1 Company has made full payments of

workers of Units A & B and substantial amounts to the workers of Units C & D including members workers of the petitioners, pursuant to the sanctioned scheme. The Company till date, has paid Rs.59.52 crores to the workmen. The members of the petitioners Union have been paid Rs.5.29 crores towards closure, compensation and wages. Out of 40 crores, received from KRC, a sum of Rs.29 crores has been utilised to pay the workers' dues. Of the amount of Rs.5.29 crores paid to the petitioners members, a sum of Rs.1.13 crores was paid from the amount received from KRC. It is therefore, set out that the Respondent No.1 has acted on the agreement with KRC and from the amounts received, they have also paid the workers the substantial amount. It is therefore, submitted that for the aforesaid reasons, this Court ought not to interfere at this stage in implementing the scheme as sanctioned by B.I.F.R. and as approved by A.A.F.I.R.

3. In our considered opinion, considering the facts on record, it will be difficult for us at this stage to interfere in the exercise of our extra ordinary jurisdiction. B.I.F.R. has been specially constituted with the object of restructuring or rehabilitation of sick companies. In the instant

case, B.I.F.R. declared Respondent No.1 as a sick company within the meaning of the Act. A scheme thereafter has been framed. The scheme was challenged by the Respondents before A.A.I.F.R. That appeal has been dismissed.

4. The only grounds as urged before us on behalf of the petitioners, were that considering the facts on record, the scheme ought not to have been sanctioned. Findings of fact have been recorded by B.I.F.R. and those findings have been confirmed by A.A.I.F.R. to the extent that company is sick, which clock cannot be set back. Thereafter, restructuring package has been approved based on that, third party rights have been created and respondent no.1 till date, has received a sum of Rs.40 crores out of which a sum of Rs.29 crores have been paid as workers' dues. In so far as the contention raised under Section 18, in our opinion, is totally devoid of merit. It is open to B.I.F.R. to consider under Section 18 all or any of the provisions including sale of Industrial Unit for the purposes of sanctioned scheme. Considering Section 18 itself and B.I.F.R. could have considered a provision, some of the provisions or all the provisions. That contention, must therefore, also be

rejected.

5. In so far as report is concerned, it was contended that it was not before B.I.F.R. We have perused the petition. There is no averment raised before us that the report of BTRA was not produced before B.I.F.R. and B.I.F.R. considered the same without the same being available. Apart from that on behalf of Respondent No.1 it is pointed out that so far BTRA report is concerned, all concerned including the Operating Agency and the various secured Lenders of the Respondent Company were founders of the same. As pointed out by us earlier, the recognised union has also not opposed the scheme. The members of the petitioner Union themselves have secured the financial benefits under the scheme. Hence, no case is made out for interference and consequently, petition stands dismissed.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI,J.]

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